Supreme Court, U.S.
FILED
JUN 17 2003
OFFICE OF THE CLERK

No. 02-1489

In the Supreme Court of the United States

LINDA L. HOLLINS,

Petitioner,

v.

JOANNE B. BARNHART,
COMMISSIONER OF SOCIAL SECURITY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITIONER'S REPLY BRIEF

CLIFFORD M. FARRELL
Counsel of Record

MANRING & FARRELL
167 N. HIGH STREET
P.O. BOX 15037
COLUMBUS, OH 43215-0037
(614) 221-1827

Counsel for Petitioner

BECKER GALLAGHER LEGAL PUBLISHING, INC.,
CINCINNATI, OHIO 800-890-5001

TABLE OF CONTENTS

Table of Contents i

Table of Cited Authorities ii

Reasons for Granting the Petition 1

Conclusion 4

TABLE OF AUTHORITIES

Cases:

Forney v. Apfel, 524 U.S. 266 (1998) 1

Sullivan v. Finkelstein, 496 U.S. 617 (1990) 1

Statutes:

42 U.S.C. § 405 (g) 1

Regulations:

20 C.F.R. § 404.983 . . . . . 2, 3

REASONS FOR GRANTING THE PETITION

This Petition for a *writ of certiorari* presents an issue potentially affecting thousands of Social Security appeals: Whether, in a Social Security claim, a remand order appealable under the statute precludes an Administrative Law Judge (ALJ) from reconsidering, without notice, issues from which no party appealed and which were not discussed by the magistrate judge or district court.

Respondent asks whether an ALJ can decide "only the specific issues identified by the district court, or whether the ALJ may reconsider other issues. . ." (Brief in Opposition at I)(hereinafter "Brief"). This suggests that respondent agrees that the original remand was limited to deciding only the specific issues the district court identified and addressed. Respondent then discussed "general" versus "limited" remands in non-Social Security contexts (Brief at 10-12), arguing that petitioner misinterpreted the nature of the remand in *Hollins 1* as "limited" and not "general" (Brief at 12-14). However, Social Security matters are not governed by criminal statutes, SEC statutes or regulations, or Court decisions from any other type of cases respondent cited as a basis for denying *certiorari*. Rather, 42 U.S.C. § 405(g) determines the scope of judicial review in social security claims. That statute defines two types of remands in Social Security claims: Sentence four and sentence six. *Sullivan v. Finkelstein*, 496 U.S. 617 (1990). Discussing limited, specific, or general remands in criminal cases, or in the context of other administrative agency matters, is immaterial.

Under 42 U.S.C. § 405(g) and the decisions of this Court, a sentence four remand is a final appealable order from which an aggrieved party must appeal. *Forney v. Apfel*, 524 U.S. 266 (1998). By not following established precedent of this

Court, the Sixth Circuit has created a new and incorrect legal standard in deciding Social Security claims. Here, no one appealed from the undisputed sentence four remand order. Both parties thus waived all issues not raised in the court before the remand, and waived the right to appeal from any issue except those decided. When no appeal was timely made, the parties waived the right to reconsider issues beyond the scope of the remand.

The fact that petitioner's original district court appeal raised only two narrow issues in itself limited the scope of the original remand order. The Court of Appeals observed that petitioner's earlier appeal involved only "two narrow errors committed by the ALJ in the initial hearing" (Pet. Apx. at 4a). Respondent's own "Question Presented" to this Court concedes petitioner's argument that this case involved a sentence four remand, with limited issues, and that the ALJ "reconsider[ed] other issues" (Brief at I). Quoting one sentence of a remand order to prove that the remand was "general" is at best disingenuous: The order in *Hollins I* unequivocally provided two limited bases for the remand, as the Court of Appeals recognized (Pet. Apx. at 4a).

The Sixth Circuit decision ignored established precedent about judicial review in Social Security claims. Following respondent's argument cloaks her with omnipotent power to review any order from any court and to ignore any order with which she disagrees. In trying to justify this outcome, the Court of Appeals relied upon a strained interpretation of 20 C.F.R. § 404.983, which gave credence to respondent's claimed right to raise new issues from which no appeal was filed. Respondent did not discuss in any meaningful fashion how she preserved the right to reconsider unappealed issues. Respondent may not exempt herself from the need to appeal to a higher court from an adverse ruling by continuing to

claim the protection of 20 C.F.R. § 404.983 in a sentence four remand. Respondent could have raised as an issue petitioner's physical impairments in *Hollins 1*, and she had the responsibility to appeal from the decision in *Hollins 1* if she thought that decision was incorrect. Respondent may not now claim the right to an unfettered reconsideration of all issues, at anytime, in any type of remand.

This petition for a *writ of certiorari* is not a "fact-bound issue that does not warrant this Court's review" (Brief at 13). This issue affects every appeal to federal court in every Social Security claim involving an order of remand: It asks this Court to define the parameters of the administrative review of a claim on remand under the applicable statute. When a district court issues a specific basis for the remand, and when the respondent waives her right to object to the terms of the remand, and files no appeal as to those terms, she may not later exercise some supreme power to revisit uncontested and unappealed issues.

CONCLUSION

For the foregoing reasons and for the reasons set forth in her Petition for *writ of certiorari,* petitioner respectfully prays this Court issue a *writ of certiorari* to review the OPINION of the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

Clifford M. Farrell, Attorney at Law
Counsel of Record
MANRING & FARRELL
167 N. High St., P.O. Box 15037
Columbus, Ohio 43215-0037
(614) 221-1827

Counsel for Petitioner